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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/916,314	07/30/2001	Kota Yoshikawa	010935	8261

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EXAMINER

GARRETT, DAWN L

ART UNIT	PAPER NUMBER
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1774

DATE MAILED: 02/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/916,314

Applicant(s)

YOSHIKAWA, KOTA

Examiner

Dawn Garrett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2,7,8,11 and 13-21 is/are pending in the application.
- 4a) Of the above claim(s) 13-19 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2,7,8 and 20 is/are allowed.
- 6) ☒ Claim(s) 11 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 July 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. This Office action is responsive to the amendment received November 16, 2005. Claims 1, 3-6, 9, 10, and 12 are cancelled. Claim 21 has been newly added. Claims 2, 7, 8, 11, and 13-21 are present in the application. Currently, claims 2, 7, 8 and 20 are allowed. Group I, Species C (see the Office action mailed December 10, 2002) is the current species of consideration. Claims 11 and 21 are under consideration. Claims 13-19 are withdrawn as non-elected.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. The objection to claim 11 set forth in the last Office action is withdrawn due to the amendment.
4. The rejection of claim 11 under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Wilderman et al. (EP 745658 A1) is withdrawn due to applicant's arguments.

Claim Objections

5. Claim 21 is objected to because of the following informalities: It is suggested that "said material" be changed to "a material" in claim 21, because the particular material recited in claim 21 was not specifically set forth in claim 11 and the use of the word "said" does not appear appropriate for dependent claim 21. Appropriate correction is required.

Claim Rejections - 35 USC § 102

6. Claims 11 and 21 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Chao et al. (US 6,037,190). Chao et al. discloses organic electro-luminescent devices comprising a blue light emitting layer. The blue-

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light emitting layer is irradiated in portions and different color emitting pixels are formed on the irradiated portions (see abstract and col.3, l. 61 to col. 4, line 2). The compounds shown by Chao et al. have conjugated portions and repeating units (see figures 10 and 11). The light emitting layer irradiated in portions is deemed to anticipate claim 11 requiring "an EL layer...in which a conjugate length of polymer is different [from] each other so that these areas have two different luminous colors or more". Chao et al. discloses a red-emitting material for the device per claim 21 (see claims 11 and 14). In the alternative that the light emitting materials do not anticipate the polymer of claim 11, it would have been obvious to one of ordinary skill in the art at the time of the invention to have formed such a light emitting layer comprising differing conjugate lengths and different color emitting portions, because Chao et al. generally teaches such a light emitting layer.

Response to Arguments

7. Applicant's arguments filed November 16, 2005 have been fully considered but they are not persuasive.

With regard to Chao et al., the examiner submits Chao et al. discloses materials with differing conjugate lengths. Since no particular emission colors are set forth for the differing conjugate lengths, Chao et al. is considered to meet the claim limitations by disclosing materials with differing conjugate lengths and areas of different emitting colors including red. The method of irradiation is considered to be a process limitation within a product claim. The Chao et al. final product appears to be the same as that required by applicant although a different process may have been used to obtain the final product.

M.P.E.P. § 2113:

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“Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.”

In re Thorpe, 227 USPQ 964, 966 (Fed. Cir. 1985)...

“The Patent Office bears a lesser burden proof in making out a case of *prima facie* obviousness for product-by-process claims because of their peculiar nature” than when a product is claimed in the conventional fashion.

In re Fessman, 180 USPQ 324, 326 (CCPA 1974).

Once the Examiner provides a rationale tending to show that the claimed product appears to be the same or similar to that of the prior art, although produced by a different process, the burden shifts to applicant to come forward with evidence establishing an unobvious difference between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289, 292 (Fed. Cir. 1983).

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dawn Garrett whose telephone number is (571) 272-1523. The examiner can normally be reached Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached at (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Dawn Garrett
Primary Examiner
Art Unit 1774

D.G.
January 30, 2006